

CC:WR:NCA:SF:TL-N-612-98  
JPThurston

from: District Counsel, Northern California District, San Francisco

**subject: Request for Post-Review of Significant Advice  
Review of [REDACTED] Loss Transaction**

We request post-review of oral advice we offered the [REDACTED] audit team. The audit team requested our advice on the tax consequences of an exchange of assets between related [REDACTED] subsidiaries prior to the sale of one of the subsidiaries to a third party.

We believe this advice qualifies for post-review under CCDM (35) 3 (19) 4 (4) because the advice involves the application of well-settled principles of law to the facts.

We have attached a copy of a draft Notice of Proposed Adjustment ("NPA") prepared by the [REDACTED] audit team setting forth facts and copies of relevant documents along with the proposed adjustment. We have been advised by the [REDACTED] audit team that the NPA will not be issued to the taxpayer based in part on the advice we provided.

The structure of the entities involved in the transaction prior to [REDACTED] was as follows:

[REDACTED] 21 [REDACTED]

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11 11

\_\_\_\_\_

\_\_\_\_\_

" aka " "



We also advised that the same memo that states that liabilities were transferred with the loan assets also provides that the transfer of the loan assets occurred while [REDACTED] was a subsidiary of [REDACTED], before the stock of [REDACTED] was distributed by [REDACTED] to [REDACTED] on [REDACTED] [NPA Exhibit C ([REDACTED] Memorandum), at ¶ 3]. If the transfer of loan assets occurred prior to the [REDACTED] transfer of [REDACTED] to [REDACTED], then there would be no basis to re-characterize the loan asset transfer even if no offsetting liabilities were transferred. Instead, the transfer of loan assets would be a non-taxable §351 capital contribution between a parent [REDACTED] and its subsidiary [REDACTED]. Only if the [REDACTED] transfer had already occurred, thereby changing the relationship between [REDACTED] and [REDACTED] from parent-subsidiary to brother-sister corporations, would there be a basis for the re-characterization sought in the NPA.

We advised that we did not think that the transfer of loan assets from [REDACTED] to [REDACTED] should be re-characterized as a dividend from [REDACTED] to the common parent followed by a capital contribution from the parent to [REDACTED] as there is no reason not to believe the evidence that an offsetting amount of liabilities were transferred with the loan assets and that the loan assets were transferred to [REDACTED] while it was still a subsidiary of [REDACTED].

Please call Jim Thurston at (415) 744-9201 if you have any questions.

  
JAMES P. THURSTON  
Special Litigation Assistant

Attachment

cc: Assistant Regional Counsel (TL)  
(without attachment)